

REFORM OF CRIMINAL MATERIAL LAW IN REPUBLIC OF MACEDONIA (1996-2002)

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Abstract: Macedonia as a country in transition had many reforms in the area of criminal law. One of the main reasons of the reforms of course was harmonization with European law. Periodization of criminal law is part of this article, novelty as a method was used as a part of the reforms in field of criminal code. After the independence of Macedonia from 1991 so many reforms were made in the area of criminal material and criminal procedural law. First reform in criminal material law started in 1996 with the adoption of the Criminal Code the main aims of this code was related in two things: in reform of the general and specific parts of articles and system of sanctions. The next reform was in 1999, the main reasons of this reform were building a new strategy for prevention of modern types of crime such as a organized crime and corruption; following the reforms of EU countries and international obligations of Macedonia. The upcoming reform was at 2002 which was more focused on the general part of criminal code, euro integration, changes of the structure of the crime and new forms of crime. Finally the last part of this article is in field of juvenile delinquency and the reform as a most important reforms in the area of criminal law.

Key words: reforms, novelty, criminal code, new forms of crime, system of sanctions

Introduction

Criminal law is a specific area, which is door to the most of social sciences as: sociology and criminal politics. The main point of this paper is analyzing the reforms in field of criminal material law in Republic of Macedonia and to give a short historical view of first great reforms in the history of law such as: Babylonian code of ancient Mesopotamia or well known as a Code of Hammurabi, Code of Dragon and Codex Iustinianus.

From the independence of Macedonia (1991) till now we had reforms in criminal material law starting from 1996, 1999, 2002, 2004, 2009 and 2014. One of the most important things is that novelty was used as a second method of reforms in Macedonian criminal material law, and the first one was changing the whole criminal code.

Except the reforms on criminal material law, is so important to mention the first reform in field of criminal procedural law.

The reform in procedural law, started with the creation of draft version of Macedonian criminal code by ministry of justice and the main aims of the code were: harmonization of the criminal procedural code with the constitution of Republic of Macedonia, with the most important international acts about human rights. Introducing the new system of values, the harmonization of Macedonian criminal law with European criminal law, international obligations of the state such as implementation of international agreements were part of the main targets of the reform from 1996. The reform of 1999 was made by using the method of novelty, taking into account the transition period and the new types of modern crimes such as organized crime money laundering, human trafficking and corruption, these were shown as a

reason for new reform in Macedonian criminal material law, so one of the main aims of the second reform was building a strategy for prevention of corruption and organized crime.

Finally the next reform was on 2002 and the provisions of the criminal code were more focused on the general part of criminal code, euro integration, and new forms of crime.

Historical view of criminal law

There are different views regarding the periodization of criminal law. As a base of the periodization there are different target groups, for example: the appearance of crime; social reaction; the period of modern criminal law etc. Given the foregoing, it can be concluded that there are different classifications around periodization. One of the most accepted periodization is that the criminal law is divided into two stages: prehistory and a real history that began from the beginning of the XIX century with the affirmation of the principle of legality as a main principle of law.⁶⁴

It's so important to mention the main points of the sanctions, and the transformation of the revenge to the public sanction. One of the most important laws known for its draconian penalties is the Hammurabi Code (Babylonian code of ancient Mesopotamia) from the 20th century BC, the code is known for the principle of talion: an eye for an eye, a tooth for a tooth (*lex tallionis*).

From the principle of talion comes out the idea of "fair revenge". From the provision of the Code of Hammurabi can be noted the following rule: "*per quod quis peccat, per idem punitur*" one who commits a sin is punished through it and in the same way, as an example of the maxim can be the following provisions of the code:⁶⁵

"If a man practice brigandage and be captured, that man shall be put to death" (Article 22)

"If a son strike his father, they shall cut off his fingers" (Article 195)

"If men destroy the eye of another man, they shall destroy his eye" (Article 196)

The appearance of public sanction plays an important role in the period of transition from the primitive community into a state. The right of punishment (*ius gladii*) caused the following transformations in the way of punishing people: compensation is transforming to fine, instead of retribution- death penalty or body injuries and finally instead of exclusion from the community- expulsion from the state. When we talk about the evolution of the punishments and the historical view of criminal law is so important to mention the laws in ancient Greece and the Roman Empire.

⁶⁴ Камбовски Владо, Казнено право – општ дел, Универзитет Св. Кирил и Методиј, Скопје, 2011, page 27.

⁶⁵ Поповска Билјана, Историја на правото, Правен Факултет Јустинијан Први- Скопје, 2-ри Август Ц-Штип, Скопје, 2005, pages 108 and 126.

One of the most famous codes from Ancient Greece is *Code of Dragon*, the code is well known with cruel penalties even for petty offenses, for example robberies were punishing with death penalty and this is the reason why the code is well known as a “code written with blood”.

The next reform was made by Solon in 594 BC. The most important reform in the Roman Empire is The Codex Iustinianus (Corpus Iuris Civilis), the collections of laws and legal interpretations developed by the Byzantine emperor Justinian I from 529 to 565. The works did not constitute a new legal code. Rather, Justinian’s committees of jurists provided basically two reference works containing collections of: past laws and extracts of the opinions of the great Roman jurists.⁶⁶

The code consists 5 parts: *novus codex Iustinianus*; *digesta (pandectae)*; *institutiones*; *codex repetitae praelectionis*; *novellae*. The great reform of the criminal law can be considered in three main points: through Cesare Baccaria, Jeremy Bentham and the French Revolution of 1789.

“On Crimes and Punishments” (*Dei delitti e delle pene*), is a treatise written by Cesare Beccaria in 1764 and it’s so important for developing criminal-legal theory in XIX century. Jeremy Bentham is one of the most influential and most important representatives of utilitarianism; his attitudes about criminal law were highlighted in the famous book named: “*Introduction to the principles of morality and legislation*”

About the French revolution from 1789 in this context is so important to mention The Declaration of the Rights of Man and Citizen which is the first contemporary constitutional document. Most important codifications on criminal law from the XIX century are: Code penal (codification of French criminal law), Bavarian criminal code, Austrian criminal code from 1852, Dutch criminal code from 1881, Belgian criminal code 1867, Hungarian criminal code 1878, Turkish criminal code 1858 and the Italian criminal code from 1889.

Objectives of the reform of criminal material law

Before analyzing the phases of the reforms in Macedonian criminal law, it is so important to emphasize that there are two different methods for implementing the criminal justice reforms: the first method is “preparing and *adopting a new criminal code* and the second one is with *novelty*. Taking into account the fact that the modern criminal law, from the XIX century to the present day, insists on respecting the principle of legality and the principle of the rule of law in order to build a democratic legal state, it is so important to mention that protection of the human rights and freedoms must be of key importance.

Since the independence of the Republic of Macedonia from 1991, certain regulations (including criminal legislation) from the former Yugoslavia have still been applied. After the

⁶⁶ <<https://www.britannica.com/topic/Code-of-Justinian>> accessed August 29, 2017,15:03

independence of Macedonia, the criminal code of Yugoslavia from 1977 was still in force, till the preparations of new reform and new code. The first stage of the reform of the Macedonian criminal material law started in 1996 with the adoption of the Criminal Code. One of the most important aims of the reform is related to following two stages:

First stage: adoption of the new criminal code with some changes of the general and special part of the articles;

Second stage: system of sanctions;

The criminal code from 1996 is the first legislative act with which the reform in Republic of Macedonia was started and followed by the Criminal Procedural Code, Code on Execution on Sanctions and the Code of Misdemeanors, the aim of these codes was creating a modern democratic and legal state. The draft version of the Criminal Procedural Code was prepared in 1995 by the Ministry of Justice. This is the first stage of the reform in the area of criminal procedural law. The main aims of the reform were: harmonization of the criminal procedural code with the constitution of Republic of Macedonia, with the most important international acts about human rights: European Convention on Human Rights, International Pact of Civil and Political Rights and other documents as well as with jurisprudence of the European Court of Human Rights in Strasbourg and the UN Human Rights Committee.⁶⁷

The adoption of the new criminal legislation was the part of changes in the social, political and economic system! They have a character of social reform which means redefinition of following principles: instead of political monism- pluralism and parliamentary democracy; instead of social (public) property-private property; instead of political state- legal state (state of law) etc.⁶⁸

One of the main targets of the new Criminal Code, apart from respecting the fundamental human freedoms and rights which are *jus naturalis*, introducing the new system of values, the harmonization of Macedonian criminal law with European criminal law, international obligations of the state such as implementation of international agreements, development of human rights and creating effective criminal system for successful prevention of serious types of crime such as: corruption, money laundering, organized crime etc.

The United Nations Office of Drugs and Crime has defined the organized crime as follow: Organized crime threatens peace and human security, violates human rights and undermines economic, social, cultural, political and civil development of societies around the world.⁶⁹ One of the important incriminations in first stage of reform was creating a new conception of “guilt”.

⁶⁷ Матовски Никола, Бужаровска. Лажетик Гордана, Калаџиџев, Гордан, Казнено Процесно Право, 2-ри Август Ц Штип, Скопје, 2011, page 29.

⁶⁸ Камбовски Владо, Казнено-правната реформа пред предизвиците на XXI век, Bato&Divajn Graphic Auter, Скопје, 2002, page 342.

⁶⁹ <<https://www.unodc.org/unodc/en/organized-crime/index.html>> , accessed August 30, 2017, 22:17

Article 17 of Criminal Code is about the action of legal misconception (*the offender is not criminally responsible for a crime which, for justified reasons, did not know and could not have known that it was forbidden, and if the offender of the crime could have known that the act was forbidden, it could be punished milder*⁷⁰) With the new incriminations in criminal code, the action of the legal misconception is leaving the psychological conception and passing to normative conception of guilt.

Certain incrimination have been made around the system of penalties (ways of punishing), according to article 32 has also been redefying the aim of punishment. The aim of punishment is preventing the offender from committing criminal acts and prevention of crime. The minimum of the prison with the new reform was raised to 30 days and the maximum at 15 years. With the new reform the concept of rehabilitation was thoroughly reconstructed, according to article 103 there is: legal rehabilitation and judicial rehabilitation. Most important changes in the special part of criminal code were in the following articles:

- crimes against life and body
- crimes against freedoms and rights of citizen
- Protection of the right of privacy
- crimes against sexual freedom and morality
- crimes against marriage, family and youth
- crimes against the environment (in view of the actuality of the environmental pollution)
- protection of the eco system
- crimes against armed forces
- crimes against humanity and international law
- crimes against honor;

Several changes were made in the area of crimes against human health; murder of a judge, a public prosecutor, and a lawyer. Incriminations about elections were set out in a different chapter of criminal code. The reform of 1999 was made by using the method of novelty, three main reasons for the reform were:

- building a strategy for prevention of corruption and organized crime;
- following the reforms of European countries;
- international obligations of Republic of Macedonia;

The next reform of the criminal code from 2002 was not as extensive as the previous one, the several changes were made in order to harmonize the provisions. The most important parts of the reform were provisions on cybercrime in accordance with article 251, human trafficking and finally we can mention the harmonization of UN Convention against Transnational

⁷⁰ Criminal Code of Republic of Macedonia, Article 17.

Organized Crime and its additional protocols whose purpose is to promote cooperation to prevent and combat transnational organized crime more effectively.⁷¹

The second phase of reform in 2002 was more focused on the general part of criminal code, euro integration, changes of the structure of the crime and new forms of crime. It's so important statistically to analyze the dynamics of the crime from 1991 (independence of Macedonia) to 2001 (before the second phase of the reform on 2002).

Total reported, accused and convicted adult perpetrators of criminal offences:⁷²

Years	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Reported	13429	17149	22816	20283	19969	19452	19277	20582	19383	20220	18018
Accused	9678	8801	8496	8534	9579	8012	7167	7891	8533	8078	7509
Convicted	7095	6660	6538	6724	7711	6341	4732	6128	6783	6496	5952

Several changes have been made about confiscation of property, securities fraud, submission of false evidence. Apart from the mentioned changes, in this second phase of reform were introduced new expressions in criminal code such as “domestic violence” (family violence).

Article 122 of criminal code covers provision about domestic violence: domestic violence means harassment, rude insults, endangering safety, physical harming, sexual or other psychological or physical violence sexual or other psychological or physical violence that causes a feeling of insecurity, endangerment or fear, towards spouse, parents or children or other persons living in a marital or extramarital union or a common household, as well as to a former spouse or persons who have a common child or are in close personal relationships.⁷³ In article 3 of Council of Europe domestic violence was explained as acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former and current spouses or partners, whether or not the preparatory shares or has share the same residence with the victim.⁷⁴

Conclusion

The laws are mirror of every countries tradition, moral and ethical values, social and economic statue, education and mentality. Reforms in field of criminal material law in

⁷¹ <<https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>> , accessed September 01, 2017, 20:00

⁷² <www.stat.gov.mk> accessed December 01, 17:37

⁷³ Методија Каневчев, Кривичен законик на Р.М (Criminal Code of Republic of Macedonia), 2-ри Август Ц-Штип, Скопје, article 122, 2010.

⁷⁴ Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 3, 2011.

Republic of Macedonia were related to social changes, new types of crime, euro integration, following European laws, creating new criminal politics etc.

From 1991 Macedonia was a country in transition, this process is characterized by the creating and changing institutions, this period is also well known with economic crises, statistically increasing the number of crime and appearance the new forms of crime, all this things were indicators of new reform requirement. The great reforms in field of criminal material law in Macedonia were made following years: 1996, 1999, 2002, 2004, 2009 and 2014.

The reform of the criminal legislation in most transition countries is destructive process that seriously threatens the idea of a state of law and human rights and freedoms, because these processes are incited by disorganization that occurs in all radical social changes and are a consequence of abandonment of one value system and the difficulties in accepting a new value system along with the creation of new economic relations and a new legal institutional framework. Keeping into account the importance of the reforms about criminal material law, it should be emphasized that mainly this reforms are crucial for creating “legal state” including principles of legality and the rule of law.

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